



Docket No.: 0538B

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail No. <u>667158231US</u> in an envelope addressed to: MS. Appeal Brief-Patents, Commissioner for Patents; P. O. Box 1450; Alexandria, VA 22313-1450, on:	
May 30, 2006 (date)	 Lori G. Witkin

In re: Application of : Allan HERROD

Serial No. : 09/589,514 Group Art Unit: 2876

Filed : June 8, 2000 Examiner: J. Franklin

For : LINK COST MINIMIZATION FOR PORTABLE WIRELESS TERMINAL CONNECTABLE TO THE INTERNET

New York, New York
May 30, 2006

BRIEF ON APPEAL (IN TRIPPLICATE)

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from a final rejection mailed September 30, 2005 of claim 80 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,854,985 (“Sainton”) in view of U.S. Patent No. 6,279,059 (“Ludtke”) and U.S. Patent No. 5,327,144 (“Stilp”), and of claim 81 under 35 U.S.C. §103(a) as being unpatentable over Sainton/Ludtke/Stilp in view of U.S. Patent No.

6,088,127 ("Pieterse"), and of claim 82 under 35 U.S.C. §103(a) as being unpatentable over Sainton/Ludtke/Stilp in view of U.S. Patent No. 5,490,217 ("Wang").

REAL PARTY IN INTEREST

The real party in interest is Symbol Technologies, Inc., a Delaware corporation, having an office at One Symbol Plaza - Mail Stop A6, Holtsville, New York 11742-1300, the assignee of the inventors, Allan HERROD, Mehul PATEL and Jerome SWARTZ, by assignment recorded March 22, 2001 at Reel 011618, Frame 0072.

RELATED APPEALS AND INTERFERENCES

No other appeals or interferences are known to the appellant, the appellant's legal representative, or the assignee.

STATUS OF CLAIMS

Claims 80-82, as set forth in the attached Appendix, are on appeal. As stated above, claim 80 stands rejected over 35 U.S.C. §103 over Sainton in view of Ludtke and Stilp, claim 81 stands rejected under 35 U.S.C. §103 over Sainton/Ludtke/Stilp in view of Pieterse, and claim 82 stands rejected under 35 U.S.C. §103 over Sainton/Ludtke/Stilp in view of Wang.

**STATUS OF ALL AMENDMENTS
FILED SUBSEQUENT TO FINAL REJECTION**

No amendments were proposed after the final rejection. A Request for Reconsideration was filed on December 29, 2005. An Advisory Action mailed January 25, 2006

confirmed the obviousness rejections of the claims. The Notice of Appeal was filed on January 30, 2006.

CONCISE SUMMARY OF THE INVENTION

This invention is concerned with reducing the cost of transmitting data and images from a mobile data collection terminal to a remote host over a communications network having a plurality of channels. A digital camera (see page 11, first full paragraph of specification) is supported on the mobile terminal (see Fig. 5), and is operated to capture an image. The image, as well as other data, are transmitted over the channel determined to have the least cost. This determination is based on determining the geographic location of the terminal relative to the host by operation of a global positioning system (page 12, line 12 of the specification). These features are recited in independent claim 80. Other features are recited in the dependent claims 81-82.

CONCISE STATEMENT OF ISSUES PRESENTED FOR REVIEW

The issues to be decided by this Honorable Board is whether or not claim 80 was properly rejected under 35 U.S.C. §103(a) as being unpatentable over Sainton in view of Ludtke and Stilp, and whether claim 81 was properly rejected under 35 U.S.C. §103 as being unpatentable in further view of Pieterse, and whether claim 82 was properly rejected under 35 U.S.C. §103 as being unpatentable in further view of Wang.

GROUPINGS OF CLAIMS FOR GROUNDS OF REJECTION WHICH APPELLANT CONTESTS

Independent claim 80 and its dependent claims 81-82, as set forth in the attached Appendix, constitute the sole grouping of claims which appellant contests.

ARGUMENT WITH RESPECT TO ISSUES PRESENTED

A. THE CITED ART

1. U.S. Patent No. 5,854,985 to Sainton

Sainton discloses a system which allows a user of a terminal to conveniently access any one of a number of wireless service providers within a geographic area based on cost and quality of service. The location of the terminal relative to a host is *never* determined. Channel selection is *not* based on the location of the terminal.

2. U.S. Patent No. 6,279,059 to Ludtke

Ludtke discloses a surveillance camera which is mounted at a *fixed docking station* in inconspicuous locations difficult to access (col 1, lines 11-13). Motion control mechanisms 120 are used to pan the camera. Ludtke does not disclose any “mobile” data collection terminal, nor any terminal whose geographic location changes and must be determined.

3. U.S. Patent No. 5,327,144 to Stilp

Stilp discloses a cell site system 12. A global positioning system (GPS) is mentioned at col. 10, lines 30-32. The GPS does not determine location. Rather than determine the geographic location of any terminal, Stilp’s GPS is used to send timing data to an antenna 12-6 so that a GPS receiver 12-8 is correctly synchronized.

4. U.S. Patent No. 6,088,127 to Pieterse

Pieterse discloses a transmitting fax machine 21 (or computer 22) operative for transmitting data to a receiving fax machine 26 (or computer 27) over a “store and forward” device 20 (or 30). A human user checks a box 8(1), 8(2), 8(j) on a fax cover sheet 1 (see Fig. 3), and the user thereby decides whether the transmission priority is low, normal, or high (col. 8, lines 34-

40). The store and forward device 20 forwards the message based on the transmission priority decided by the user (col. 2, lines 20-25).

Cost of data transmission is *not* a factor determined by Pieterse. As specifically stated at col. 2, lines 36-37 of Pietrese: "... no attention being paid to the cost of occupying such a communication link".

5. *U.S. Patent No. 5,490,217 to Wang*

Wang discloses the capture of the image of a document, such as by using a scanner or a fax machine, not by using a digital camera.

**B. THE EXAMINER'S REMARKS
ON THE OBVIOUSNESS REJECTIONS**

In the final action mailed September 30, 2005, the Examiner stated that:

1. Regarding claim 80, Sainton taught the steps of "determining a location of the terminal relative to the host" and "selecting the channel for data transmission based on the location of the terminal"; and Stilp taught the step of "determining a geographical location of the terminal relative to the host by operation of a global positioning system".

2. The Examiner admitted that Sainton does not teach a digital camera, and that Sainton and Ludtke both do not teach the step of determining a geographical location by operation of a global positioning system, and that Sainton, Ludtke and Stilp each do not teach the step of determining a priority for the data or constituting the image as a bar code symbol.

**C. THE EXAMINER'S OBVIOUSNESS REJECTIONS
ARE NOT WELL BASED AND SHOULD BE REVERSED**

Reversal of the obviousness rejections is respectfully requested.

The Examiner's statements that Sainton taught the steps of "determining a location of the terminal relative to the host" and "selecting the channel for data transmission based on the location of the terminal" are not accurate.

At best, Sainton allows a user of a terminal to conveniently access any one of a number of wireless service providers within a geographic area based on cost and quality of service. The location of the terminal relative to a host is *never* determined. Channel selection is *not* based on the location of the terminal.

Ludtke was cited for its teaching of a digital camera. Yet, Ludtke's surveillance camera is mounted at a *fixed docking station* in inconspicuous locations difficult to access (col. 1, lines 11-13). Motion control mechanisms 120 are used to pan the camera. This is far afield from appellant's claimed "mobile" data collection terminal whose geographic location changes and must be determined.

Stilp was cited for its teaching of "determining a geographical location of the terminal relative to the host by operation of a global positioning system (col. 10, lines 10-36)". Yet, this statement is incorrect, because Stilp teaches no such thing.

As the Board will note upon reconsidering this excerpt at col. 10, lines 10-36, the only mention of a global positioning system (GPS) is at lines 30-32. Rather than determine geographic location of any terminal, Stilp's GPS is used to send timing data to the antenna 12-6 so that the GPS receiver 12-8 is correctly synchronized.

In her obviousness rejection of main claim 80, the Examiner held that it would first be obvious to combine Ludtke's camera with Sainton's mobile terminal. Appellant cannot

understand why someone would be motivated to add a fixed camera to Sainton's mobile terminal when Sainton does not even hint that a camera should be mounted on the terminal.

Next, the Examiner held that it would be beneficial to add Stilp's GPS system to the Sainton/Ludtke combination for determining the location of the terminal. As previously noted, Ludtke's docking station is fixed in position and, as for Sainton or Stilp, neither determine terminal location, and certainly not by a GPS.

As for Pieterse, appellant specifically claims that the "location" of a "mobile terminal relative to a remote host" is determined. Neither the transmitting fax machine 21 nor the computer 22 of Pieterse is mobile relative to the receiving fax machine 26 or the computer 27 and, assuming that the transmitting fax machine/computer are movable, not one word is mentioned anywhere in Pieterse that its location is, or can be, determined.

Appellant specifically claims that the cost of transmitting data from the "location" of the terminal over each channel to the host is determined. Pieterse does not determine cost based on the location of its transmitting fax machine/computer.

Appellant also claims that the channel selected for data transmission is based on the "location and the least cost". Pieterse merely teaches that the user selects the transmission priority based on his or her personal desire and that cost is *not* a factor in making this selection.

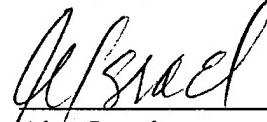
Allowance of claims 80-82 is respectfully requested.

CONCLUSION

The 35 U.S.C. §103(a) rejections of the claims for the reasons set forth in the final rejection should be reversed.

Respectfully submitted,

KIRSCHSTEIN, OTTINGER, ISRAEL & SCHIFFMILLER, P.C.
Attorneys for Applicant(s)
489 Fifth Avenue
New York, New York 10017-6105
Tel: (212) 697-3750
Fax: (212) 949-1690



Alan Israel
Registration No. 27,564

APPENDIX

Claim 80 : A method of reducing a cost of transmitting data from a mobile data collection terminal to a remote host over a communications network having a plurality of channels including a wireless channel, comprising the steps of:

- a) supporting a digital camera on the terminal;
- b) operating the camera to capture an image;
- c) determining a geographic location of the terminal relative to the host by operation of a global positioning system;
- d) determining the cost of transmitting the data, including the image, from the geographic location of the terminal over each channel to the host;
- e) selecting the channel for data and image transmission based on the geographic location of the terminal and the cost determined to be least; and
- f) transmitting the data and image from the terminal to the host over the channel selected with the least cost.

Claim 81 : The method of claim 80, and the step of determining a priority for the data and the image, and wherein the selecting step is also based on the priority of the data and the image.

Claim 82 : The method of claim 80, wherein the image is a bar code symbol.